

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

C.S.,

Plaintiff,

v.

THE CORPORATION OF THE
CATHOLIC BISHOP OF YAKIMA,
et al.,

Defendants.

NO: 13-CV-3051-TOR

ORDER ON DEFENDANTS'
MOTIONS TO DISMISS

BEFORE THE COURT are the following motions: (1) Defendant Corporation of the Catholic Bishop of Yakima's Motion to Dismiss for Failure to State a Claim (ECF No. 2); (2) Defendant Diocese of Beaumont's Motion to Dismiss for Failure to State a Claim (ECF No. 6); (3) Defendant Diocese of Beaumont's Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 7); and (4) Defendant Diocese of Beaumont's Motion to Strike the Affidavit of Thomas P. Doyle (ECF No. 19). These matters were heard with oral argument on September

1 24, 2013, in Yakima, Washington. Vito de la Cruz and Bryan G. Smith appeared
2 on behalf of the Plaintiff. Theron A. Buck and Thomas D. Frey appeared on behalf
3 of Defendant Corporation of the Catholic Bishop of Yakima. Gregory J. Arpin and
4 Randal G. Cashiola (telephonically) appeared on behalf of Defendant Diocese of
5 Beaumont. The Court has reviewed the briefing and the record and files herein,
6 and is fully informed.

7 BACKGROUND

8 Plaintiff has sued the Corporation of the Catholic Bishop of Yakima
9 (“Yakima Diocese”) and the Diocese of Beaumont (“Beaumont Diocese”) for
10 negligently failing to prevent him from being sexually abused as a minor by a
11 priest named Father Ernest Dale Calhoun (“Father Calhoun”). Both Defendants
12 have moved to dismiss the complaint for, *inter alia*, failure to plead sufficient facts
13 to support an inference that the statute of limitations on Plaintiff’s claims has been
14 tolled under RCW 4.16.340. The Beaumont Diocese also seeks dismissal of
15 Plaintiff’s claims for lack of personal jurisdiction.

16 FACTS

17 The following facts are drawn from Plaintiff’s complaint and are accepted as
18 true for purposes of the instant motion only. *Bell Atl. Corp. v. Twombly*, 550 U.S.
19 544, 556 (2007). Plaintiff was sexually abused by Father Calhoun on multiple
20 occasions from approximately 1977 to 1982. Pl.’s Compl., ECF No. 1, at ¶ 3.2.

1 The abuse began when Plaintiff was approximately 12 years old and continued
2 until Plaintiff reached the age of 17. Pl.'s Compl., ECF No. 1, at ¶ 3.3. On at least
3 one occasion, a church leader named Monsignor Ecker witnessed Father Calhoun
4 "escorting" Plaintiff to the church rectory immediately prior to an instance of
5 abuse. Pl.'s Compl., ECF No. 1, at ¶ 3.5.

6 Prior to joining the Yakima Diocese, Father Calhoun was affiliated with the
7 Beaumont Diocese in Beaumont Texas. Pl.'s Compl., ECF No. 1, at ¶ 3.11.

8 During his time in Beaumont, Father Calhoun was accused of engaging in
9 "inappropriate sexual conduct with seminarians." Pl.'s Compl., ECF No. 1, at ¶
10 3.7. As a result of these accusations, Father Calhoun was ordered to undergo a
11 psychological evaluation. Pl.'s Compl., ECF No. 1, at ¶ 3.8. The psychologist
12 who performed the evaluation concluded that Father Calhoun posed a risk of
13 engaging in inappropriate sexual conduct and recommended that he not be
14 ordained as a priest. Pl.'s Compl., ECF No. 1, at ¶ 3.10. Despite this
15 recommendation, the Beaumont Diocese ordained Father Calhoun as a priest in
16 1968. Pl.'s Compl., ECF No. 1, at ¶ 3.10.

17 After a brief period of service as a chaplain in the United States Navy (1974-
18 1976), Father Calhoun sought employment with the Yakima Diocese. Pl.'s
19 Compl., ECF No. 1, at ¶ 3.14. Upon receiving his application, the Yakima Diocese
20 requested an evaluation of Father Calhoun's fitness to serve as a priest from the

1 Beaumont Diocese. Pl.’s Compl., ECF No. 1, at ¶ 3.16. The Beaumont Diocese
 2 responded that while Father Calhoun had “experienced problems” during his
 3 tenure there, he would likely be successful in the Yakima Diocese. Pl.’s Compl.,
 4 ECF No. 1, at ¶ 3.17. The Beaumont Diocese did not, however, “disclose in
 5 writing . . . that Father Calhoun had been accused of inappropriate sexual conduct
 6 with minors in seminary and/or while employed by the Diocese of Beaumont, and
 7 that a psychological evaluation had concluded that Father Calhoun posed a risk of
 8 engaging in inappropriate sexual conduct.” Pl.’s Compl., ECF No. 1, at ¶ 3.18.
 9 The Yakima Diocese “incardinated” Father Calhoun and maintained authority,
 10 control and supervision over him. Pl.’s Compl., ECF No. 1, at ¶¶ 3.19 and 3.23.

11 DISCUSSION

12 **A. Personal Jurisdiction Over the Beaumont Diocese**

13 A motion to dismiss for lack of personal jurisdiction is governed by Federal
 14 Rule of Civil Procedure 12(b)(2). In opposing such a motion, the plaintiff bears
 15 the burden of establishing that jurisdiction is proper. *Mavrix Photo, Inc. v. Brand*
 16 *Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2008). When the motion is “based on
 17 written materials rather than an evidentiary hearing, the plaintiff need only make a
 18 prima facie showing of jurisdictional facts to withstand the motion to dismiss.” *Id.*
 19 (citing *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th
 20 Cir. 2010)). To satisfy this standard, a plaintiff “need only demonstrate facts

1 that[,] if true[,] would support jurisdiction over the defendant.” *Harris Rutsky &*
2 *Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003)
3 (quotation and citation omitted). In determining whether a plaintiff has made the
4 requisite showing, a court must accept all uncontroverted allegations in the
5 complaint as true and resolve any factual disputes in the Plaintiff’s favor. *Id.*

6 The term personal jurisdiction refers to a court’s power to render a valid and
7 enforceable judgment against a particular defendant. *World-Wide Volkswagen*
8 *Corp. v. Woodson*, 444 U.S. 286, 291 (1980). The exercise of this power is limited
9 by the Due Process Clause of the Fourteenth Amendment. In general, due process
10 requires that a non-resident defendant have sufficient “minimum contacts” with the
11 forum state such that requiring the defendant to defend in that forum would
12 comport with traditional notions of fair play and substantial justice. *Int’l Shoe Co.*
13 *v. Washington*, 326 U.S. 310, 316 (1945).

14 Personal jurisdiction over a non-resident defendant may take one of two
15 forms: general jurisdiction or specific jurisdiction. *Bancroft & Masters, Inc. v.*
16 *Augusta Nat’l, Inc.*, 233 F.3d 1082, 1086 (9th Cir. 2000). General jurisdiction may
17 be exercised over a defendant who has established “substantial” or “continuous and
18 systematic” contacts with the forum, regardless of whether the cause of action
19 arose from those contacts. *Id.* Specific jurisdiction, by contrast, may only be
20 exercised when the plaintiff’s cause of action arises from the defendant’s specific

1 contacts with the forum. *Id.* In either case, the critical inquiry is whether the
2 defendant's contacts with the forum are sufficiently extensive to warrant the
3 exercise of personal jurisdiction. *Id.*

4 Plaintiff concedes that he is unable to establish general jurisdiction over the
5 Beaumont Diocese. ECF No. 11 at 7. Thus, the Court will proceed directly to the
6 specific jurisdiction analysis. The following three-part test controls:

7 (1) The non-resident defendant must *purposefully direct his activities*
8 or consummate some transaction with the forum or resident thereof;
9 or perform some act by which he *purposefully avails himself* of the
10 privilege of conducting activities in the forum, thereby invoking the
11 benefits and protections of its laws; (2) the claim must be one which
12 arises out of or relates to the defendant's forum-related activities; and
13 (3) the exercise of jurisdiction must comport with fair play and
14 substantial justice, i.e., it must be reasonable.

15 *Mavrix Photo*, 647 F.3d at 1228-29 (9th Cir. 2011) (emphasis in original)
16 (quotation and citations omitted). The plaintiff bears the burden of establishing
17 that the first two prongs have been satisfied. *CollegeSource, Inc. v. AcademyOne,*
18 *Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011). If the plaintiff is successful, the burden
19 shifts to the defendant "to set forth a 'compelling case' that the exercise of
20 jurisdiction would not be reasonable." *Id.* (quoting *Burger King Corp. v.*
Rudzewicz, 471 U.S. 462, 476-78 (1985)).

For the reasons discussed below, the Court concludes that (1) Plaintiff has
failed to demonstrate that the Beaumont Diocese "purposefully directed" its
activities toward the State of Washington; and (2) in the alternative, the Beaumont

1 Diocese has made a “compelling case” that the exercise of specific jurisdiction
2 would be unreasonable on the facts of this case.

3 1. Purposeful Direction (*Calder* Effects Test)

4 The first prong of the specific jurisdiction test may be satisfied by either
5 “purposeful direction” of the defendant’s activities toward the forum state or
6 “purposeful availment” of the forum state’s laws. *Yahoo! Inc. v. La Ligue Contre*
7 *La Racisme et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc).
8 These are “two distinct concepts,” and courts applying them must be careful to
9 apply the correct test based upon the type of claim(s) being asserted. *In re W.*
10 *States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716, 743 (9th Cir. 2013).
11 “In tort cases, [courts in the Ninth Circuit] typically inquire whether a defendant
12 ‘purposefully directs his activities’ at the forum state[.] *Yahoo! Inc.*, 433 F.3d at
13 1206. In deciding whether purposeful direction occurred, courts apply an “effects
14 test” that “focuses on the forum in which the defendant’s actions were felt, whether
15 or not the actions themselves occurred within the forum.” *Id.* This test, which is
16 derived from the Supreme Court’s decision in *Calder v. Jones*, 465 U.S. 783
17 (1984), “requires that the defendant allegedly must have (1) committed an
18 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the
19 defendant knows is likely to be suffered in the forum state.” *Mavrix Photo*, 647
20 F.3d at 1228 (quotation and citation omitted).

1 i. Intentional Act

2 The term “intentional act” has a “specialized meaning in the context of the
3 *Calder* effects test.” *Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668,
4 673 (9th Cir. 2012) (quotation and citation omitted). For purposes of this test, “an
5 intentional act is an external manifestation of the actor’s intent to perform an
6 actual, physical act in the real world, not including any of its actual or intended
7 results.” *Id.*

8 The Beaumont Diocese engaged in an intentional act when it sent a letter of
9 recommendation to the Yakima Diocese on Father Calhoun’s behalf. This was an
10 “actual, physical act in the real world.” *Id.* The fact that the Beaumont Diocese
11 may not have intended the alleged results of that act is irrelevant. *Id.* This prong
12 of the *Calder* effects test is satisfied.

13 ii. Express Aiming

14 The “express aiming” prong is satisfied “when the defendant is alleged to
15 have engaged in wrongful conduct targeted at a plaintiff whom the defendant
16 knows to be a resident of the forum state.” *Wash. Shoe*, 704 F.3d at 675 (quotation
17 and citation omitted); *see also Bancroft & Masters*, 223 F.3d at 1087 (“‘[E]xpress
18 aiming’ encompasses wrongful conduct individually targeting a known forum
19 resident.”). The nature of the express aiming analysis “depends, to a significant
20 degree, on the specific type of tort or other wrongful conduct at issue.”

1 *Schwarzenegger v. Fred Martin Motor Co.*, 347 F.3d 797, 807 (9th Cir. 2004).

2 When the alleged conduct involves an *intentional* tort, for example, the analysis is
3 relatively straightforward. In these cases, the defendant's actions "[were]
4 performed for the very purpose of having their consequences felt in the forum
5 state." *Id.* Because such conduct implicates the forum state's "special interest in
6 exercising jurisdiction over those who commit intentional torts" against its
7 residents, the exercise of personal jurisdiction is usually supported. *Id.* at 675-76
8 (citing *Licciardello v. Lovelady*, 544 F.3d 1280, 1286 (11th Cir. 2008)).

9 In cases of alleged *negligence*, by contrast, the express aiming requirement
10 is more difficult to satisfy. *See Calder*, 465 U.S. at 789 (distinguishing "untargeted
11 negligence" from "express aiming"); *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104,
12 1112 (same).¹ The dispositive question in such cases is whether the defendant

13 ¹ Indeed, there is reason to question whether negligence claims are properly
14 analyzed under *Calder* in the first instance. *See Holland Am. Line Inc. v. Wartsila*
15 *N. Am., Inc.*, 485 F.3d 450, 454, 460 (9th Cir. 2007) (declining to apply *Calder*
16 effects test to claims for negligent design and negligent manufacture of an
17 allegedly defective engine part). Given that Plaintiff's theory of personal
18 jurisdiction over the Beaumont Diocese clearly involves "express aiming" of
19 negligent acts toward the State of Washington, however, the Court will proceed
20 with the *Calder* analysis. *See* ECF No. 11 at 9 ("The Diocese of Beaumont

1 “individually targeted” a resident of the forum state or whether it was “merely
2 foreseeable that there [would] be an impact on individuals in the forum.” *Fiore v.*
3 *Walden*, 688 F.3d 558, 581 (9th Cir. 2012). Mere foreseeability of injury in the
4 forum state is insufficient to satisfy the express aiming requirement; the plaintiff
5 must demonstrate that the defendant made a conscious and deliberate effort to
6 engage a resident of the forum. *See id.* at 577; *Wash. Shoe*, 704 F.3d at 677
7 (“[W]here a defendant *knows*—as opposed to being able to foresee—that an
8 intentional act will impact another state, the ‘expressly aimed’ requirement is
9 satisfied.”) (emphasis in original).

10 Plaintiff has failed to satisfy the express aiming requirement. First, Plaintiff
11 cannot demonstrate that he was “individually targeted” by the Beaumont Diocese’s
12 letter of recommendation. To whatever extent the Beaumont Diocese “knew or
13 should have known” that its alleged misrepresentations about Father Calhoun
14 would harm Washington residents, *see* ECF No. 11 at 9-13, there is no indication
15 (or even an allegation) that *Plaintiff* was specifically targeted. At best, Plaintiff has
16 established that the Beaumont Diocese should have anticipated that persons in his
17 position might have been harmed. Such mere foreseeability of generalized harm,
18
19 purposefully directed acts aimed at Washington State causing harm that it knew or
20 should have known was likely to be suffered.”).

1 however, is insufficient to satisfy the express aiming requirement. *Fiore*, 688 F.3d
2 at 581. Because the Beaumont Diocese did not “individually target[] a known
3 forum resident,” Plaintiff cannot satisfy the express aiming prong of the *Calder*
4 effects test. *Bancroft & Masters*, 223 F.3d at 1087. This absence of express
5 aiming is fatal to Plaintiff’s ability to establish personal jurisdiction over the
6 Beaumont Diocese. In the interest of developing a complete record, however, the
7 Court will proceed with the remainder of the personal jurisdiction analysis.

8 iii. Foreseeability of Harm

9 The third prong of the *Calder* effects test “asks whether the intentional acts
10 caused harm that the defendant knows is likely to be suffered in the forum state.”
11 *In re W. States*, 715 F.3d at 744. The relevant inquiry is whether “the defendant’s
12 intentional act ha[d] ‘foreseeable effects’ in the forum.” *Fiore*, 688 F.3d at 581.

13 Plaintiff has satisfied the foreseeability prong. Although a close question,
14 the Beaumont Diocese could arguably have foreseen that failing to disclose Father
15 Calhoun’s alleged propensity for “inappropriate sexual conduct” would result in
16 harm to Washington residents. For purposes of this prong, it matters not whether
17 the Beaumont Diocese could have foreseen harm to Plaintiff personally.

18 2. Claims Arising From Forum-Specific Contacts

19 The second prong of the specific jurisdiction analysis focuses on whether the
20 plaintiff’s claims arise out of the defendant’s forum-related activities. Courts in

1 the Ninth Circuit apply a “but for” test to determine whether this requirement has
2 been satisfied. *In re W. States*, 715 F.3d at 742. “Under the ‘but for’ test, a lawsuit
3 arises out of a defendant’s contacts with the forum state if a direct nexus exists
4 between those contacts and the cause of action.” *Id.* (quotation omitted).

5 The Court finds that the “but for” test has been satisfied. Contrary to the
6 Beaumont Diocese’s assertions, Plaintiff need not establish that he would not have
7 been *injured* “but for” its alleged negligence. *See* ECF No. 7 at 14. Instead,
8 Plaintiff must merely demonstrate that his claims—irrespective of their underlying
9 merit—would not have arisen but for the Beaumont Diocese’s contacts with
10 Washington. *In re W. States*, 715 F.3d at 742. That requirement is easily satisfied
11 here, as Plaintiff’s causes of action all arise from the Beaumont Diocese’s
12 communications with the Yakima Diocese about Father Calhoun.

13 3. Reasonableness Considerations

14 As noted above, because Plaintiff has failed to demonstrate purposeful
15 direction of the Beaumont Diocese’s activities toward Washington, personal
16 jurisdiction is lacking. Nevertheless, assuming for the sake of argument that
17 Plaintiff could establish purposeful direction, the Court concludes that the exercise
18 of personal jurisdiction over this Defendant would offend traditional notions of fair
19 play and substantial justice.

1 Once a plaintiff satisfies the first two prongs of the specific jurisdiction
 2 analysis, the burden shifts to the defendant to make a “compelling case” that the
 3 exercise of personal jurisdiction would be unreasonable—*i.e.*, that requiring the
 4 defendant to litigate in the forum would offend traditional notions of fair play and
 5 substantial justice. *In re W. States*, 715 F.3d at 745 (citing *Burger King*, 471 U.S.
 6 at 476-77). There are seven factors relevant to a court’s reasonableness inquiry:

7 (1) the extent of the defendant’s purposeful injection into the forum
 8 state’s affairs; (2) the burden on the defendant of defending in the
 9 forum; (3) the extent of the conflict with the sovereignty of the
 10 defendant’s state; (4) the forum state’s interest in adjudicating the
 11 dispute; (5) the most efficient judicial resolution of the controversy;
 12 (6) the importance of the forum to the plaintiff’s interest in convenient
 13 and effective relief; and (7) the existence of an alternative forum.

14 *Dole Food*, 303 at 1114. The Court will address each of these factors in turn.

15 i. Extent of Purposeful Injection

16 The extent of the Beaumont Diocese’s purposeful injection into the State of
 17 Washington’s affairs was *de minimis*. The Beaumont Diocese’s *only* alleged
 18 contact with Washington was a letter mailed to the Yakima Diocese addressing
 19 Father Calhoun’s fitness to serve as a priest. Notably, this letter was sent in
 20 response to a formal request for information *by the Yakima Diocese*; the Beaumont
 Diocese did not initiate the contact. Doyle Aff., ECF No. 12, at ¶ 25. Moreover,
 according to Plaintiff, the Beaumont Diocese was “*required* by Church law and
 practice” to respond to the Yakima Diocese’s inquiry. ECF No. 11 at 4 (emphasis

1 added). A single obligatory letter of recommendation simply cannot support a
2 finding of “purposeful injection” into the State of Washington’s affairs.

3 Further, it bears noting that the Beaumont Diocese’s endorsement of Father
4 Calhoun was far from glowing. *See* Doyle Decl., ECF No. 12, at ¶¶ 26-27.
5 Plaintiff himself describes the letter as a “qualified and suspicious reference,” *see*
6 ECF No. 11 at 11, and this description appears to be supported by the excerpts of
7 the letter in Mr. Doyle’s affidavit. Thus, even assuming that the Beaumont
8 Diocese omitted important facts about Father Calhoun’s fitness to serve as a priest,
9 the information which it *did* convey effectively put the Yakima Diocese “on
10 notice” that Father Calhoun was not an ideal candidate. This circumstance also
11 cuts against a finding that the Beaumont Diocese purposefully injected itself into
12 Washington’s affairs.

13 Plaintiff suggests that the purposeful injection factor should weigh in his
14 favor because “the Beaumont Diocese retained personal authority and jurisdiction
15 over Calhoun” during his first two years of probationary employment with the
16 Yakima Diocese. ECF No. 11 at 14. There is no dispute that Father Calhoun
17 remained “incardinated” with the Beaumont Diocese during his two-year term of
18 “*ad experimentum*” employment with the Yakima Diocese, and that, as a result,
19 Father Calhoun remained under the official authority of the Bishop of the
20 Beaumont Diocese during that time. Jamail Decl., ECF No. 8, at ¶ 7; Doyle Decl.,

1 ECF No. 12, at ¶ 36. Nevertheless, the record reveals that the Bishop of the
2 Beaumont Diocese exercised no *actual* authority over Father Calhoun's actions
3 once he accepted employment with the Yakima Diocese. Indeed, Plaintiff's own
4 expert states that the Bishop of the Beaumont Diocese "did not have the right to
5 directly control Calhoun's ministerial activities in Yakima because these activities
6 involved serving the people of the Diocese of Yakima and not the Diocese of
7 Beaumont." Doyle Aff., ECF No. 12, at ¶ 36.

8 This explanation is corroborated by Monsignor Jamail of the Beaumont
9 Diocese, who states as follows:

- 10 • Priests may leave the Diocese of Beaumont from time to time, and
11 for various personal reasons, but in doing so, they are under the
12 control and supervision of the Bishop of the Diocese where they
serve;
- 13 • Once the Bishop [of a "receiving diocese"] accepts a priest *ad*
14 *experimentum*, that Bishop assumes responsibility over the priest,
including all compensation of the priest, in relation to the pastoral
15 care of the Catholic population in the receiving Diocese. The
Bishop of the receiving Diocese determines in his sole discretion
16 whether and when to accept the priest into the Diocese
permanently, and so determines in his sole discretion the duration
of the *ad experimentum* [period];
- 17 • During the incardination process, including the period of *ad*
18 *experimentum*, the Bishop of the sending Diocese has no right of
direct control over the activities of the priest. During the *ad*
19 *experimentum* period, the priest remains attached to the sending
Diocese, but is exclusively serving the Bishop of the receiving
20 Diocese.

1 Jamail Decl., ECF No. 8, at ¶¶ 12, 22. In sum, it is undisputed that, for all practical
2 purposes, Father Calhoun was under the exclusive authority and control of the
3 Yakima Diocese from the moment he arrived in 1976. The fact that the Bishop of
4 the Beaumont Diocese retained nominal or token authority over Father Calhoun
5 during his two years of *ad experimentum* employment does not warrant a finding
6 of purposeful injection into Washington's affairs.

7 ii. Burden on Defendant

8 The burden on the Beaumont Diocese of defending in Washington is high.
9 The Beaumont Diocese is a non-profit association which operates exclusively in
10 nine counties in the State of Texas. Jamail Decl., ECF No. 8 at ¶ 4, 7. It has never
11 done business in Washington, and it has never offered its services to Washington
12 residents. Jamail Decl., ECF No. 8 at ¶ 11. In short, the Beaumont Diocese has
13 virtually no connections to the State of Washington. Requiring it to defend here
14 would pose a significant burden financial burden. This factor also weighs strongly
15 in the Beaumont Diocese's favor.

16 iii. Conflicts in Sovereignty

17 This factor is neutral. Neither party has identified a potential conflict in
18 sovereignty between Washington and Texas.

19 iv. Forum State's Interest

20 Washington has a significant interest in adjudicating cases involving sexual

1 abuse of Washington children. *See C.J.C. v. Corp. of the Catholic Bishop of*
2 *Yakima*, 138 Wash.2d 699, 712 (1999) (noting that the Washington Legislature
3 enacted RCW 4.16.340 “to provide a broad avenue of redress for victims of
4 childhood sexual abuse”). This factor weighs generally in Plaintiff’s favor, despite
5 the fact that Plaintiff no longer resides in Washington. *See* Pl.’s Compl., ECF No.
6 1, at ¶ 1.1 (Plaintiff is a resident of Washington County, Oregon).

7 v. Efficient Resolution of Controversy

8 Litigating in a single forum, as opposed to two different forums, would
9 provide the most efficient judicial resolution of this controversy. This factor
10 weighs in Plaintiff’s favor.

11 vi. Convenient & Effective Relief

12 Plaintiff clearly has an interest in obtaining convenient and effective relief in
13 the Eastern District of Washington. However, this interest is diminished to some
14 degree by the fact that he currently resides near Portland, Oregon. The Court takes
15 judicial notice that the distance between Portland and Yakima is approximately
16 180 miles. While this distance does not render the Eastern District of Washington
17 a particularly *inconvenient* forum, the fact that Plaintiff has sought relief outside
18 his “home” forum renders this factor less significant. It also bears noting that this
19 factor is typically afforded less weight in the first instance by courts in the Ninth
20 Circuit. *See Dole Food*, 303 F.3d at 1116 (“[I]n this circuit, the plaintiff’s

1 convenience is not of paramount importance.”). This factor weighs slightly in
2 Plaintiff’s favor.

3 vii. Existence of an Alternative Forum

4 This factor weighs strongly in the Beaumont Diocese’s favor, as the Eastern
5 District of Texas remains available to Plaintiff as an alternative forum.

6 On balance, the above factors weigh squarely in the Beaumont Diocese’s
7 favor. The fact the Beaumont Diocese’s only contact with Washington was a
8 single letter of recommendation submitted in response to a formal request for
9 information by the Yakima Diocese is a particularly compelling circumstance.
10 Even if Plaintiff could establish that this letter was “purposefully directed” to
11 Washington, the Court concludes that requiring the Beaumont Diocese to defend in
12 Washington based upon this *de minimis* contact would offend traditional notions of
13 fair play and substantial justice. Plaintiff’s claims against the Beaumont Diocese
14 are dismissed for lack of personal jurisdiction on this alternative basis as well.

15 4. Request for Jurisdictional Discovery

16 At oral argument, Plaintiff moved for leave to take limited jurisdictional
17 discovery on the issue of whether the Beaumont Diocese purposefully directed its
18 activities toward Washington. Leave to take jurisdictional discovery should be
19 permitted when “pertinent facts bearing on the question of jurisdiction are in
20 dispute.” *Am. W. Airlines, Inc. v. GPA Grp., Ltd.*, 877 F.2d 793, 801 (9th Cir.

1 1989) (citing *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430-31 n.
2 24 (9th Cir. 1977)). When a court finds that discovery “would not demonstrate
3 facts sufficient to constitute a basis for jurisdiction,” however, leave to take
4 jurisdictional discovery is properly denied. *Wells Fargo*, 556 F.2d at 430 n. 24;
5 *see also St. Clair v. City of Chico*, 880 F.2d 199, 202 (9th Cir. 1989) (“Where, as
6 here, the extra-pleading material demonstrates that the controlling questions of fact
7 are undisputed, additional discovery would be useless.”).

8 As noted above, it is undisputed that the Bishop of the Beaumont Diocese
9 exercised no actual authority or control over Father Calhoun during his period of
10 *ad experimentum* employment with the Yakima Diocese. According to Plaintiff’s
11 own expert, the Bishop of the Beaumont Diocese “did not have the right to directly
12 control Calhoun’s ministerial activities in Yakima because these activities involved
13 serving the people of the Diocese of Yakima and not the Diocese of Beaumont.”
14 Doyle Aff., ECF No. 12, at ¶ 36. Thus, contrary to Plaintiff’s assertions, the
15 controlling issue of fact for purposes of the purposeful direction analysis is
16 undisputed: although the Beaumont Diocese may have retained *symbolic* authority
17 over Father Calhoun, it retained no *actual* authority over his actions during his
18 period of probationary employment. As a matter of undisputed fact, the Beaumont
19 Diocese did not engage in purposeful direction of its activities toward Washington
20

1 by allowing Father Calhoun to transfer to the Yakima Diocese. No additional
2 discovery on this issue is warranted.

3 **B. Motion to Strike**

4 The Beaumont Diocese has moved to strike the affidavit of Thomas P. Doyle
5 (ECF No. 12) on the grounds that Mr. Doyle's statements are speculative and not
6 supported by personal knowledge. ECF No. 19. Having reviewed the affidavit,
7 the Court finds the statements therein admissible for the limited purpose for which
8 they were submitted—to respond to the Beaumont Diocese's assertions regarding
9 the absence of personal jurisdiction. Accordingly, the motion is denied. The Court
10 has fully considered this evidence in reaching the ruling above.

11 **C. Failure to State a Claim**

12 A motion to dismiss for failure to state a claim “tests the legal sufficiency”
13 of the plaintiff's claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To
14 withstand dismissal, a complaint must contain “enough facts to state a claim to
15 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
16 (2007). “Naked assertion[s],” “labels and conclusions,” or “formulaic recitation[s]
17 of the elements of a cause of action will not do.” *Id.* at 555, 557. “A claim has
18 facial plausibility when the plaintiff pleads factual content that allows the court to
19 draw the reasonable inference that the defendant is liable for the misconduct
20 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While a plaintiff need not

1 establish a probability of success on the merits, he or she must demonstrate “more
2 than a sheer possibility that a defendant has acted unlawfully.” *Id.*

3 A complaint must also contain a “short and plain statement of the claim
4 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This
5 standard “does not require detailed factual allegations, but it demands more than an
6 unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at
7 678 (quoting *Twombly*, 550 U.S. at 555). In assessing whether Rule 8(a)(2) has
8 been satisfied, a court must first identify the elements of the plaintiff’s claim(s) and
9 then determine whether those elements could be proven on the facts pled. The
10 court should generally draw all reasonable inferences in the plaintiff’s favor, *see*
11 *Sheppard v. David Evans and Assocs.*, 694 F.3d 1045, 1051 (9th Cir. 2012), but it
12 need not accept “naked assertions devoid of further factual enhancement.” *Iqbal*,
13 556 U.S. at 678 (internal quotations and citation omitted).

14 In ruling upon a motion to dismiss, a court must accept all factual allegations
15 in the complaint as true and construe the pleadings in the light most favorable to
16 the party opposing the motion. *Sprewell v. Golden State Warriors*, 266 F.3d 979,
17 988 (9th Cir. 2001). The court may disregard allegations that are contradicted by
18 matters properly subject to judicial notice or by exhibit. *Id.* The court may also
19 disregard conclusory allegations and arguments which are not supported by
20 reasonable deductions and inferences. *Id.*

1 The Ninth Circuit has repeatedly instructed district courts to “grant leave to
2 amend even if no request to amend the pleading was made, unless . . . the pleading
3 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203
4 F.3d 1122, 1130 (9th Cir. 2000). The standard for granting leave to amend is
5 generous—the court “should freely give leave when justice so requires.” Fed. R.
6 Civ. P. 15(a)(2). In determining whether leave to amend is appropriate, a court
7 must consider the following five factors: bad faith, undue delay, prejudice to the
8 opposing party, futility of amendment, and whether the plaintiff has previously
9 amended the complaint. *United States v. Corinthian Colleges*, 655 F.3d 984, 995
10 (9th Cir. 2011).

11 The Yakima Diocese has moved to dismiss the Complaint for failure to
12 plead sufficient facts to support Plaintiff’s invocation of Washington’s “savings
13 statute,” RCW 4.16.340, for claims involving allegations of childhood sexual
14 abuse. Specifically, the Yakima Diocese contends that Plaintiff “fails to assert any
15 facts that would establish a feasible claim that he has only recently discovered the
16 nature of his damages; instead he simply quotes the savings language from the
17 statute.” ECF No. 2 at 2. Given that the Complaint “merely parrots the statutory
18 language and adds no actual facts demonstrating recent discovery of harm,” the
19 Yakima Diocese argues, Plaintiff’s negligence claims must be dismissed. ECF No.
20 15 at 4 (emphasis in original).

1 In Washington, negligence claims are subject to a three-year statute of
2 limitations. RCW 4.16.080(2); *Hill v. Withers*, 55 Wash.2d 462, 464 (1960). By
3 statute, this limitations period can be tolled for negligence claims involving
4 allegations of childhood sexual abuse under certain circumstances:

5 All claims or causes of action based on intentional conduct brought by
6 any person for recovery of damages for injury suffered as a result of
7 childhood sexual abuse shall be commenced within the later of the
8 following periods:

9 (a) Within three years of the act alleged to have caused the
10 injury or condition;

11 (b) Within three years of the time the victim discovered or
12 reasonably should have discovered that the injury or
13 condition was caused by said act; or

14 (c) Within three years of the time the victim discovered that the
15 act caused the injury for which the claim is brought.

16 RCW 4.16.340(1). Under this statutory scheme, “the limitations period only
17 begins to run on the date of the injury-causing act or the date the victim discovers
18 the nexus between that act and the claimed injury, whichever is later.” *Oostra v.*
19 *Holstine*, 86 Wash. App. 536, 542 (1997).

20 Plaintiff has alleged that he was abused on various occasions from 1977
until 1982. Pl.’s Compl., ECF No. 1, at ¶ 3.2. Because the most recent allegation
of abuse occurred over thirty years ago, Plaintiff’s claims are time-barred unless

1 the statute of limitations has been tolled. Despite this obvious barrier to relief, the
2 Complaint contains only two allegations relevant to tolling under RCW 4.16.340:

3 Plaintiff has not yet discovered, nor should he reasonably have
4 discovered, all of the damages caused by the abuse alleged herein.
Pl.'s Compl., ECF No. 1, at ¶ 3.28.

5 Plaintiff's claims have not expired under the Statute of Limitations
6 because not more than three years have elapsed since becoming aware
of the damages caused by the abuse. Pl.'s Compl., ECF No. 1, at ¶
7 5.17.

8 These allegations fail to raise Plaintiff's right to relief above the speculative
9 level. Contrary to Plaintiff's assertions, a mechanical recitation of the language of
10 RCW 4.16.340(1)(b), *without supporting factual content*, is wholly insufficient to
11 trigger the statute's protections. The law on this point is now well-settled. *See*
12 *Twombly*, 550 U.S. at 555 ("While a complaint attacked by a Rule 12(b)(6) motion
13 to dismiss does not need detailed factual allegations, a plaintiff's obligation to
14 provide the 'grounds' of his 'entitlement to relief' requires more than labels and
15 conclusions[.]") (citations omitted); *Iqbal*, 556 U.S. at 678 ("A pleading that offers
16 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of
17 action will not do.' Nor does a complaint suffice if it tenders 'naked assertions'
18 devoid of 'further factual enhancement.'") (quoting *Twombly*, 550 U.S. at 557).
19 Plainly stated, Plaintiff cannot simply copy-and-paste the language of the savings
20 statute into his Complaint. While this type of boilerplate recitation arguably
satisfies the more lenient pleading standard embodied in Washington Superior

1 Court Civil Rule 12(b)(6), *see McCurry v. Chevy Chase Bank, FSB*, 169 Wash.2d
2 96, 101-03 (2010), it is patently deficient under Federal Rule of Civil Procedure
3 12(b)(6). To avoid dismissal in this Court, Plaintiff must go one step further: he
4 must plead specific, real-world facts which, when accepted as true, would support
5 an inference that he has discovered damages related to the alleged abuse within the
6 past three years.

7 The Court is mindful that RCW 4.16.340 must be construed broadly in favor
8 of victims of childhood sexual abuse. *See C.J.C.*, 138 Wash.2d at 712 (noting that,
9 in enacting RCW 4.16.340, the Washington Legislature “specifically provided for
10 a broad and generous application of the discovery rule to civil action for injuries
11 caused by childhood sexual abuse.”). Nevertheless, Plaintiff has failed to plead a
12 single *fact* from which the Court might construe the statute in his favor. He has not
13 alleged, for example, that his memory of the alleged abuse had been repressed until
14 a specific date within the past three years; that he had been unable to connect the
15 alleged abuse to a known injury until a specific date within the past three years; or
16 that he did not discover the full scope of the injuries caused by the alleged abuse
17 until a specific date within the past three years. *See C.J.C.*, 138 Wash.2d at 712-
18 13. Nor has he taken the next step of stating the circumstances under which any
19 such recent discovery actually occurred. Unless and until Plaintiff corrects these
20 deficiencies, his Complaint fails to state a viable claim.

1 Because the deficiencies identified above could potentially be cured by
2 pleading additional factual content, leave to amend is appropriate. *Lopez*, 203 F.3d
3 at 1130. Plaintiff's claims against the Yakima Diocese are therefore dismissed
4 with leave to amend within **fourteen (14) days** of the date of this Order.

5 **D. Defendant Yakima Diocese's Remaining Challenges**

6 The Yakima Diocese has raised a number of additional challenges to the
7 legal sufficiency of Plaintiff's claims. Given that Plaintiff's entire complaint is
8 being dismissed with leave to amend, the Court deems it inappropriate to rule on
9 these challenges at this time. In the event that Plaintiff amends his complaint, the
10 Yakima Diocese may renew its additional challenges at that time. At its option,
11 the Yakima Diocese may submit any renewed challenges for consideration on the
12 existing briefing. In responding to any such renewed challenges, Plaintiff may
13 likewise rely on his existing briefing. Alternatively, the parties are welcome to re-
14 brief the relevant issues entirely.

15 **IT IS HEREBY ORDERED:**

- 16 1. Defendant Diocese of Beaumont's Motion to Strike the Affidavit of
17 Thomas P. Doyle (ECF No. 19) is **DENIED**.
- 18 2. Defendant Diocese of Beaumont's Motion to Dismiss for Lack of
19 Personal Jurisdiction (ECF No. 7) is **GRANTED**. Plaintiff's claims
20 against the Diocese of Beaumont are **DISMISSED** without prejudice.

1 The District Court Executive is directed to **TERMINATE** this Defendant
2 (erroneously named as the Roman Catholic Diocese of Beaumont).

3 3. Defendant Diocese of Beaumont's Motion to Dismiss for Failure to State
4 a Claim (ECF No. 6) is **DENIED as moot**.

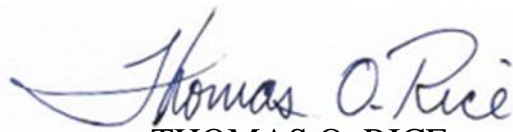
5 4. Defendant Corporation of the Catholic Bishop of Yakima's Motion to
6 Dismiss for Failure to State a Claim (ECF No. 2) is **GRANTED**.

7 Plaintiff's claims against this Defendant are **DISMISSED** without
8 prejudice. Plaintiff is granted leave to file an Amended Complaint within
9 **fourteen (14) days** of the date of this Order.

10 The District Court Executive is hereby directed to enter this Order and
11 provide copies to counsel.

12 **DATED** September 25, 2013.




THOMAS O. RICE
United States District Judge